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Supreme Court, U.S.
FILED

95-702 OCT 30 1995

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

ENRIQUE A. ARMENDARIZ,

Petitioner,

v.

THE PINKERTON TOBACCO COMPANY,

Respondent.

Petition For Writ Of Certiorari
To The Fifth Circuit Court Of Appeals

SUPPLEMENTAL APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ENRIQUE A. ARMENDARIZ, PLAINTIFF,	§	
V.	§	EP-92-CA-115-B
PINKERTON TOBACCO COMPANY, DEFENDANT.	§	

JUDGMENT

(Filed Jul. 30, 1993)

On July 14, 1993, this action came before the Court for a trial by jury. Plaintiff and Defendant appeared in person and through their designated representatives and by their respective attorneys and announced ready for trial.

Whereupon, a jury of seven (7) good and lawful men and women residing in the Western District of Texas, duly selected, empaneled and sworn, and having heard the evidence admitted, the jury did, on the 15th day of July, 1993, retire to consider their verdict, and thereafter, on the 15th day of February, 1993, did return in open court their verdict in response to the following questions contained in the Court's charge:

QUESTION NO. 1

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT AGE WAS A DETERMINING FACTOR IN THE PINKERTON

TOBACCO COMPANY'S DECISION TO DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST ENRIQUE A. ARMENDARIZ?

ANSWER "YES" OR "NO"

ANSWER: YES X. NO _.

PROCEED TO QUESTION NO. 2 ONLY IF YOUR ANSWER TO QUESTION NO. 1 WAS "YES". OTHERWISE, DO NOT ANSWER ANY OTHER QUESTIONS.

QUESTION NO. 2

WHAT AMOUNT OF MONEY, IF ANY, IF PAID NOW IN CASH, DO YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT ENRIQUE ARMENDARIZ IS ENTITLED TO AS BACK PAY WAGES AND BENEFITS FROM THE DATE OF DISCRIMINATION TO THIS DATE?

ANSWER IN DOLLARS AND CENTS OR "NONE".

ANSWER: $50,000.

IF YOU ANSWERED "YES" TO QUESTION NO. 1, PROCEED TO QUESTION NO. 3. OTHERWISE, DO NOT ANSWER.

QUESTION NO. 3

WHAT AMOUNT OF MONEY, IF ANY, IF PAID NOW IN CASH, DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE, THAT ENRIQUE ARMENDARIZ IS ENTITLED TO AS LOST FUTURE WAGES AND BENEFITS FROM THIS DATE TO THE DATE OF RETIREMENT?

ANSWER IN DOLLARS AND CENTS OR "NONE".

ANSWER: 0

PROCEED TO QUESTION NO. 4.

QUESTION NO. 4

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT THE PINKERTON TOBACCO COMPANY'S DECISION TO DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST ENRIQUE ARMENDARIZ, BECAUSE OF HIS AGE, WAS WILLFUL?

ANSWER "YES" OR "NO"

ANSWER: YES X. NO _.

THIS IS THE LAST QUESTION.

The verdict was received by the Court without objection as being the verdict of seven (7) jurors, whereupon the Court accepted the verdict and ordered it entered in the minutes of Court.

The Court, having considered the pleadings, the evidence, the undisputed facts, and all facts heard by the Court but not submitted to the jury, is of the opinion the law and the facts entitle Plaintiff to judgment as hereinafter decreed. Furthermore, the Court is of the opinion the jury's determination in question no. 4 of willfulness is not supported by the evidence and thus, will not award any liquidated damages based on the jury's advisory answer to question no. 4. Thus, this Court is of the opinion the following Judgment is appropriate. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED That Plaintiff, ENRIQUE A. ARMENDARIZ, recover from the Defendant, PINKERTON TOBACCO COMPANY the sum of $50,000 as BACK PAY together with interest at the rate of 3.54% per annum as damages for Plaintiff, ENRIQUE

A. ARMENDARIZ's Age Discrimination in Employment Act ("ADEA") cause of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Costs are hereby assessed against Defendant.

IT IS FURTHER ORDERED that Plaintiff, ENRIQUE A. ARMENDARIZ, as a prevailing party in an ADEA, lawsuit is entitled to the award of attorneys' fees. The standard which governs the computation of attorneys' fees in the Fifth Circuit was set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The Court will defer the award of attorneys' fees until Plaintiff's counsel submits an application for attorneys' fees as required by the local rules. This shall be done within ten (10) days of this Order.

IT IS FURTHER ORDERED that execution shall issue for all awards and costs herein not timely paid.

IT IS FINALLY ORDERED all other relief not specifically granted by the Judgment is hereby denied.

All other relief requested in this action, but not granted herein, is expressly DENIED.

The Clerk shall furnish a copy of the Judgment by regular mail to each attorney of record.

SIGNED this 28th day of July, 1993.

/s/ Lucius D. Bunton
HONORABLE
LUCIUS D. BUNTON
SENIOR DISTRICT JUDGE